IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

WP(C).No. 4191 of 2005(Y)

PETITIONER:

V.AJITHA, H.S.A.(SOCIAL STUDIES),
HIGHER SECONDARY SCHOOL, THIRUVAMPADY,
ALAPPUZHA.

BY ADV. SMT.V.P.SEEMANDINI (SR.)
SRI.M.R.ANISON
SMT.S.KARTHIKA
SMT.LEKSHMY RAMANATHAN

RESPONDENTS:

1. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION, ALAPPUZHA.

3. THE DISTRICT EDUCATIONAL OFFICER, ALLEPPEY.

4. THE MANAGER,
HIGHER SECONDARY SCHOOL, THIRUVAMPADY,
ALAPPUZHA.

5. V.RAJASEKHARAN NAIR, ADMINISTRATIVE OFFICER,
OFFICE OF DEPUTY DIRECTOR OF EDUCATION,
ALAPPUZHA.

6. SMT.ANILA RAJ, H.S.A.(NATURAL SCIENCE),
HIGHER SECONDARY SCHOOL, THIRUVAMPADY,
ALAPPUZHA.

BY GOVERNMENT PLEADER SMT.SUDHA
SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.T.A.RAJAN

SRI.MATHAI JOSEPH
SRI.LUIZ GODWIN D'COUTH
SRI.M.R.SUDHEENDRAN
SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SRI.P.A.KUMARAN
SMT.VINEETHA B.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/11/2007, ALONG WITH WPC NO. 16352 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the appointment order dated 24.6.2002.

Ext.P2: True copy of the staff fixation order dated 22.7.2004.

Ext.P3: True copy of the order No.B2/23466/04/D.Dis. dated 5.10.2004 issued by the 2nd respondent.

Ext.P4: True copy of the Revision Petition No.87325/04 filed by the petitioner before the 1st respondent.

Ext.P5: True copy of the order dated 31.1.2005 issued by the 1st respondent.

Ext.P6: True copy of the notice passed by the 1st respondent while issuing notice of hearing of revision petition.

Ext.P7: True copy of the letter dated 10.1.2005 issued by the 4th respondent.

Ext.P8: True copy of the letter dated 3.11.2004 issued by the 3rd respondent.

Ext.P9: True copy of the circular No.54419/04 dated 10.2.1995 issued by the 1st respondent.

Ext.P10: True copy of the G.O.(MS)No.11/2002/G.Edn. dated 7.1.2002.

RESPONDENT'S EXHIBITS:

Ext.R4(a): True copy of the letter No.B4-4257/04/K.Dis.dated 30.11.2004 together with appointment order dated 4.6.2004.

// True copy //

P.A. to Judge

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A.K.BASHEER, J.

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W.P.(C)Nos.4191 OF 2005 & 16352 OF 2007

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Dated this the 26th day of November 2007

JUDGMENT

Since the issues involved in these two writ petitions are closely interrelated, they are being disposed of through this common judgment. Learned counsel on all sides agree that the parties be relegated to the revisional authority, not only in view of the intervening development, but also since the revisional authority will be in a better position to take a comprehensive decision in the matter since one connected revision petition is already pending before the said authority.

2. Smt.V.Ajitha, petitioner in Writ Petition No.4191/05 is aggrieved since she is ordered to be reverted as UPSA. It is contended by her that she was promoted as High School Assistant in the leave vacancy of Smt.Bindu Nair with effect from June 4, 2004 in recognition of her claim under Rule 43 of Chapter XIV A KER. But it is admitted by her that respondent no.6 had been promoted earlier as HSA (Natural Science) on December 29, 2003 against a regular vacancy. But her

contention is that in view of the reduction in the post of HSA (Natural Science), respondent no.6 who is not qualified to hold the post of HSA (Social Studies) ought to have been reverted, and not the petitioner who is qualified to hold the post of HSA (Social Studies). The other contention raised by the petitioner is that the Deputy Director of Education was not entitled to scrutinise and revised the order of the District Educational Officer suo motu under Rule 20 of Chapter XXIII and that too after the prescribed period of limitation. It is also the case of the petitioner that she was not heard by the Deputy Director.

3. However, the Director of Public Instruction repelled the above contentions as revealed from Ext.P5 order. The said order passed by the Director has not been challenged by the petitioner so far, though she could have done so under Rule 92 Chapter XIV A KER. Learned counsel submits that the petitioner is prepared to take recourse to the above statutory remedy in view of the intervening development.

4. Smt.Maya Sivan Pillai, the petitioner in Writ Petition No.16352/07 was appointed as UPSA in the vacancy that arose on promotion of Smt.V.Ajitha as HSA. Consequent on the order of reversion of Smt.V.Ajitha, Maya Sivan Pillai faced threat of termination of her service. It is in that context that Smt.Maya Sivan Pillai is now before the Government, since the lower authority had repelled her contention that she was not liable to be terminated from service. As mentioned earlier it is the admitted position that the revision petition filed by Smt.Maya Sivan Pillai is pending consideration before the Government.

5. Learned counsel for the manager while justifying the action taken by the department contends primarily that a permanent teacher like respondent no.6 (Smt.Anila Raj) cannot be reverted to accommodate a leave substitute like Smt.Ajitha. It is also pointed out that the Director had correctly applied the stipulations contained in Ext.P9 circular issued by the Government. In this context, learned counsel

for the petitioner invites my attention to a decision rendered by a Division Bench of this court in **Rakhee V. State of Kerala [2007 (1) KLT 766]** and submits that the two authorities had totally ignored the principles relating to subject ratio.

6. I do not deem it necessary to go into the areas of controversy which have been projected by the parties before me, since as mentioned earlier, they have agreed that they are prepared to thrash out the issue before the revisional authority which is already in seisin of the issue at the behest on Smt.Maya Sivan Pillai. It will be open to Smt.Ajitha to prefer a revision petition against Ext.P5 order, if she so chooses under Rule 92. The revisional authority shall entertain the revision petition, if it is preferred within two weeks from the date of receipt of a copy of this judgment ignoring the delay, and it shall be heard and disposed of along with the revision petition pending before it filed by Smt.Maya Sivan Pillai. I hasten to add that I have not considered the

merit of any of the contentions raised by the parties. It will be open to the revisional authority to take a decision in the matter strictly on its merit and in accordance with law.

Therefore, the writ petitions are disposed of with a direction to the Government, the revisional authority, to take a decision in the matter as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. Needless to mention that the petitioners in the two revision petitions apart from the manager and all other teachers who are likely to be affected by any order that may be passed in the revisional authority shall be afforded sufficient opportunity to be heard before any decision is taken in the matter. It is made clear that the appointment of 6th respondent Smt.Savitha.R in writ petition No.16352/07 shall be subject to the result of the revision petitions.

(A.K.BASHEER, JUDGE)

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